

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

CLIFFORD T. PROFIT,

Petitioner,

vs.

CIVIL ACTION  
No. 12-3063-RDR

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER

This matter is before the court on a petition for habeas corpus filed pursuant to 28 U.S.C. § 2241 by a federal prisoner. Petitioner is incarcerated in the Federal Correctional Institution, Yazoo City, Mississippi. He proceeds pro se and submitted the filing fee. Petitioner seeks placement in a community confinement setting.

" 'A petition under 28 U.S.C. § 2241 attacks the execution of a sentence rather than its validity and must be filed in the district where the prisoner is confined.'" *Haugh v. Booker*, 210 F.3d 1147, 1149 (10th Cir.2000)(quoting *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir.1996)).

A court may transfer an action filed in the wrong district to cure that jurisdictional defect where such a transfer is "in

the interest of justice." 28 U.S.C. § 1631. See *Trujillo v. Williams*, 465 F.3d 1210, 1222 (10th Cir. 2006) ("Although ... §1631 contain[s] the word 'shall,' we have interpreted the phrase 'if it is in the interest of justice' to grant the district court discretion in making a decision to transfer an action....").

Here, the court notes the October 2011 revocation of petitioner's supervised release, during which petitioner was ordered confined in the custody of the Bureau of Prisons for 24 months. Petitioner filed an appeal in that matter approximately two weeks after he filed the present petition, and that appeal remains pending. Due to the pendency of that action, the court concludes transfer of this matter would not be in the interest of justice. Rather, the court will order the dismissal of the present petition without prejudice.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed without prejudice.

A copy of this order shall be transmitted to the petitioner.

**IT IS SO ORDERED.**

Dated at Topeka, Kansas, this 17<sup>th</sup> day of April, 2012.

S/ Richard D. Rogers  
RICHARD D. ROGERS  
United States Senior District Judge